Supreme Court, U.S.
FILED
JUN 20 2001
OFFICE OF THE CLERK

No. 00-1737

In The

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
and
WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

vs.

VILLAGE OF STRATTON, OHIO and JOHN M. ABDALLA, Mayor of The Village of Stratton, Ohio in His Official Capacity,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

RESPONSE TO QUESTIONS RAISED FOR REVIEW

Petitioners have asked this court to address two (2) questions. The first is the application of the Free Exercise clause of the First Amendment to the legislation of a small village in Ohio. The Village of Stratton, Ohio adopted legislation consistent with *Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940) which authorizes municipal legislation to protect its citizenry from fraudulent solicitation by requiring a stranger within the community, before permitting him to publicly solicit funds for any purpose to establish his identity and authority to act for the cause for which he purports to represent. Petitioners seek to avoid the application of *Employment Div., Oregon Dep't of Human Resources v. Smith,* 494 U.S. 872 (1990) to this content-neutral legislation. The evidence includes the testimony of Tammy Tuckosh, a lay minister who was asked:

> Question: There is nothing in your faith as a Jehovah's Witness to prevent you from obtaining a permit to enable you to go door to door, correct?
>
> Answer: Correct.

TR 82.

Make no mistake that the record below acknowledges the discretion of Jehovah's Witnesses to seek donations upon the conclusion of a presentation. The Jehovah's Witnesses engage in door-to-door canvassing in order to

RESPONSE TO QUESTIONS – continued

preach, proselytize, (Robert Ciranko at TR 19-21, 23-25, 28-29, 36-37, 45), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko at TR 47, Tammy Tuckosh at TR at 72.) ("Well, usually we take the opportunity at the end of discussing a Bible thought . . . then we mention to them if they would like to donate towards the worldwide work. . . . ")

The second issue suggested was not presented by Petitioners upon appeal to the Sixth Circuit Court of Appeals. Instead Petitioners seek to draw from the decision of the Court of Appeals an application of a case cited within the court's opinion not previously briefed nor argued before that court, a claimed right of anonymity in the canvassing process.

STATEMENT PURSUANT TO RULE 29.6

The Village of Stratton, Ohio and John M. Abballa, Mayor of the Village of Stratton, Ohio, is his official capacity, state that the Village of Stratton, Ohio is a political subdivision of the State of Ohio and that its Mayor is an elected public official.

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STATEMENT OF THE CASE

Stratton, Ohio, is a municipal village located at the Eastern border of the State, adjacent to the Ohio River. It is situated approximately a quarter mile from the State of West Virginia, and about 15 to 16 miles from the Pennsylvania state line. Ohio Route 7 runs parallel to the village, only a few feet from the Village's border. (Mayor John Abdalla at TR 88-89; Defendants' Trial Exhibits 7, 8; Stratton, Ohio Street Maps.) Stratton has a very small residential section that contains the 70 houses, (Village Solicitor Frank Bruzzese at TR 137-138, 139-140), and trailers in which its approximately 278 residents live. About 75 percent of the Village's residents are retirees. (Mayor John Abdalla at TR 89-90.)

Chapter 116 of the Stratton Village Code was originally enacted in response to concerns of Village residents and officials about uninvited, and at times fraudulent, solicitors approaching their homes for a variety of purposes, most of which were of a commercial nature. (Mayor John Abdalla at TR 94-97, 106-107; Defendants' Trial Exhibits 12, 13; Stratton Police Department Monthly Reports, August 1996 and October 1996.) This "close knit" community, (Mayor John Abdalla at TR 100), saw a need to offer protection to Stratton's vulnerable senior citizen population, which was perceived as being especially susceptible to the scams and frauds that are commonly perpetrated through door-to-door solicitation. (Mayor John Abdalla at TR 94-97; Village Solicitor Frank Bruzzese at TR 137-138, 139-140, 159-162.)

Permits are automatically issued to all applicants upon completion of the registration form. There is no

charge to the registrant. (Village Solicitor Frank Bruzzese at TR 156, 157.) The Mayor has limited discretion to deny or revoke permits and may do so only in situations in which a registrant has committed fraud or misrepresented himself or herself in the registration form, or during the course of the solicitation activity. (R. 1 Ordinance Sec. 116.06; Mayor John Abdalla at TR 105-106; Village Solicitor Frank Bruzzese at TR 157.)

No individual or organization has been denied a permit, or has had a permit revoked, under the ordinance. (Mayor John Abdalla at TR 103, 105.)

Expert testimony by Helen MacMurray, the Chief of the Consumer Protection Section of the Ohio Attorney General's Office, established that door-to-door scams are a threat to residents and in particular to senior citizens. (Helen MacMurray at TR 211-214, 217-221.) Ms. MacMurray stated that permit and registration ordinances such as that in question deter fraudulent door-to-door activity, and assist law enforcement officials in apprehending those guilty of committing such frauds. (Helen MacMurray at TR 215-217, 223.)

The Jehovah's Witnesses engage in door-to-door canvassing in order to preach, proselytize, (Robert Ciranko at TR 19-21, 23-25, 28-29, 36-37, 45), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko at TR 47; Tammy Tuckosh at TR 72.) ("Well, usually we take the opportunity at the end of discussing a Bible thought. . . . then we mention to them if they would like to donate towards the worldwide work. . . . ")

No Jehovah's Witness representative has registered under the Village of Stratton's legislation despite activities within the Village. No Jehovah's Witness has been arrested or prosecuted under the present legislation or its predecessor. Despite Petitioners' attempt to color the relationship between Jehovah's Witnesses and the Village, the efforts of the Village of Stratton to narrow Petitioners' concerns in the modification of the original 1996 legislation to the legislation now under review received favorable comment by the District Court. TR 282-3.

In April, 1998, Richard D. Moake, Counsel for Watchtower Bible and Tract Society of New York, Inc., the national Jehovah's Witnesses oversight group, (Robert Ciranko at TR 17-18, 26-29, 41; Tammy Tuckosh at TR at 84), contacted the Village contending that aspects of the predecessor ordinance to current Chapter 116 were unconstitutional under the First and Fourteenth Amendments. (Village Solicitor Frank Bruzzese at TR 145; Defendants' Trial Exhibit 17.)

On April 17, 1998, Bruzzese wrote to Moake inviting Moake's suggestions for modifications to the language of the Ordinance that would allay the Appellant's concerns, yet protect the property owners from unwanted intrusions. Bruzzese wrote, "The road to a solution is cooperation." (Defendants' Trial Exhibit 17, pg. 3.)

In subsequent letters Moake did make several drafting suggestions to the Village, some of which were incorporated into the present Ordinance. (Village Solicitor Frank Bruzzese at TR 145-148; Defendants' Trial Exhibits 17, 22.) However, Moake insisted that the Ordinance did not apply to the Petitioners, despite the Village's explicit

statements that all solicitors, including the Petitioners, were meant to fall within its ambit. (Defendants' Trial Exhibits 18, 22.)

The Village redrafted its ordinance in an effort to comply with the Petitioners' concerns. The essential thrust of the new Ordinance was to give property owners the means by which they could prevent unwanted solicitation on their property and to require registration prior to solicitation.

The village process provides a means by which residents may give notice to solicitors that their solicitations are undesired, and through which homeowners may prevent the solicitors' unwanted advances. *Rowan v. United States Post Office*, 397 U.S. 728, 737 (1970) ("The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property"); *Martin v. Struthers*, 319 U.S. 141, 148 (1943). The decision as to whether or not a residence may be approached by solicitors is left solely with the property owner.

Petitioners filed a Complaint against the Village in the United States District Court for the Southern District of Ohio seeking declaratory and injunctive relief on the basis that Chapter 116 of the Stratton Village Code is unconstitutional under the First and Fourteenth Amendments. The District Court granted in part and denied in part the Petitioners' motion and dismissed the case. Specifically, the Court ordered that restrictions limiting the time of solicitation be modified "to occur during reasonable hours of the day," and that an administrative form

not legislatively approved entitled "No Solicitation Registration Form," remove a specific reference to the Jehovah's Witnesses from the listing of groups that generally canvassed/solicited the area.

The Sixth Circuit Court of Appeals affirmed.

RESPONSE TO REASONS TO GRANT WRIT

Religious solicitation of the type practiced by the Petitioners unquestionably is activity that is protected by the First Amendment. However, this right is neither absolute, nor immune from regulation. As stated by this court in *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976):

> There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home.

Id. at 619.

In *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the Supreme Court considered the right of a religious sect to practice a sect-specific ritual that required the face-to-face solicitation of funds, in New York City area airport terminals. The Court's analysis first used the "forum based" approach set forth

in *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45 (1983), to determine the appropriate level of scrutiny to apply to activity on government property that clearly fell within the scope of the First Amendment. *International Society for Krishna Consciousness, Inc.*, 505 U.S. at 680. After finding that the airport terminals were neither traditional public forums, nor designated public forums, it applied the reasonableness standard that is to be used by courts which are called upon to analyze governmental restrictions on "all remaining public property." *Id.* at 678, 680. The Court wrote: "Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view." *Id.* at 679. *See also, United States v. Kokinda*, 497 U.S. 720, 727 (1990) ("But regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness") and *Perry*, 460 U.S. at 46 ("In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view").

Regulations that protect homeowners' rights of safety, privacy, the freedom to be undisturbed in their homes, should be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property, as long as those regulations do not substitute the judgment of the

community for that of the individual. *Kokinda*, 497 U.S. at 725-726 ("The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business, but its action is valid in these circumstances unless it is unreasonable, or . . . 'arbitrary, capricious, or invidious' ") quoting *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *See also, Martin*, 319 U.S. at 143-144.

Thus, when weighing the First Amendment rights of canvassers against the right of homeowners to security, privacy, and peacefulness in their homes, the ordinance in question need not be the most restrictive means available, nor must it be the most effective, most reasonable, or most obvious choice, it need only be reasonable. *Kokinda*, 497 U.S. at 735-736.

The Supreme Court has repeatedly upheld the constitutional validity of content-neutral laws of general applicability that are not specifically directed toward religious practice, despite incidental effects on the religious practices of religious groups. *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 879, 880 (1990); *United States v. Lee*, 455 U.S. 252 (1982); *Gillette v. United States*, 401 U.S. 437 (1971); *Braunfeld v. Brown*, 366 U.S. 559 (1961); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Minersville School Dist. Bd. Of Educ. v. Gobitis*, 310 U.S. 586 (1940). In *Smith*, the Supreme Court described the societal harm that would result from the use of a "compelling interest" standard of review to free exercise challenges to content-neutral laws of general applicability. The Court wrote: "Any society adopting such a system would be courting anarchy. . . . " *Smith*, 494 U.S. at 888.

The right of free exercise of religion does not relieve an individual of the obligation to comply with a valid neutral law of general applicability on grounds that the law proscribes (or prescribes) that which the religion proscribes (or prescribes). *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982).

This court has never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate. *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990).

Chapter 116 of the Stratton Village Code places no restrictions on the right of the Petitioners to worship, pray, and observe the rituals of their religion, other than those which unquestionably interfere with the rights of others. The Petitioners cannot argue that they are precluded from exercising their religion in a lawful manner. In fact, the Jehovah's Witnesses' primary objection to Stratton's limited regulatory scheme is that including them within its ambit would be an insult to God. (Robert Ciranko at TR 27)

Instead, Chapter 116 merely requires any individual wanting to solicit door-to-door in Stratton to register and obtain a permit for the protection and safety of the community. Permits are granted, except in instances where registrants have provided fraudulent or misleading information, or committed fraud during the course of solicitation activity. The Ordinance also provides a means by which residents can convey their desire to solicitors that they not be disturbed at their homes. In so doing, it reserves to the homeowner the decision as to whether or

not he or she will be solicited, *not the government*. Chapter 116 should be evaluated under a standard of reasonableness, and its constitutionality should be upheld.

Petitioners next suggest that anonymity of the solicitor is an important feature in this case requiring this court's consideration. No assignment of error in the Sixth Circuit Court of Appeals addressed the issue.[1]

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[1] Petitioner's Assignments of Error in the Sixth Circuit Court of Appeals were:

I. The Village's ordinance imposes a prior restraint upon Jehovah's Witnesses' Freedom of religion, speech, and press, so this court must apply strict scrutiny in assessing its validity.

II. The Village's ordinances that criminalizes the exercise of free speech without a permit is unconstitutionally vague because: It prohibits speaking about a "cause", a term held inherently vague by the U.S. Supreme Court, fails to define or distinguish between a "canvasser" and "solicitor," and impermissibly delegates to the Mayor discretion to issue or deny a permit.

III. The Village's ordinance is unconstitutionally overbroad because its reach prohibits door-to-door political speech without a permit.

IV. The Village violates the free exercise clause by subjecting Jehovah's Witnesses to the requirement of obtaining a permit prior to engaging in door-to-door religious speech.

A. The Supreme Court has continuously held that Jehovah's Witnesses cannot be required to obtain a permit in order to engage in door-to-door religious speech.

B. The Ordinance fails strict judicial scrutiny because it is not the least restrictive means to accomplish the Village's goals.

It should be deemed waived.

If considered, there is no constitutional right to anonymity. *See McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

Registration of peddlers and canvassers is a legitimate government activity authorized by the police powers of a village. It protects the householder from intrusion. Whereas here there is no governmental gatekeeper to the householder, there is no constitutional impediment.

C. The Village has failed to meet its burden of proof of demonstrating a real, rather than conjectural, governmental interest.

D. The Ordinance is not narrowly tailored to accomplish its stated goals because it is only "helpful" in combating door-to-door fraud.

E. The Village has failed to meet its burden of establishing that there are ample alternatives to door-to-door communication.

V. The ordinance is unconstitutional as applied to Jehovah's Witnesses because they were singled out in the forms created by the Village and the Mayor evinced discriminatory intent in the permit-granting process.

VI. Jehovah's Witnesses must be granted an exemption from the ordinance because obtaining a permit to engage in the door-to-door ministry violates their deeply held religious convictions.

CONCLUSION

This case is unsuitable for review because the basic question has been answered by *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990).

"The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990). It does not mean that practices are exempt. *Reynolds v. United States*, 98 U.S. 145 (1879) (rejecting the argument that the religious practice of polygamy was exempt from criminal law).

That right has not been taken from Petitioners.

Both the District Court and Sixth Circuit Court of Appeals found that the Village of Stratton's legislation to be content-neutral in a law of general applicability thereby subjecting it to intermediate scrutiny.

Content-neutral legislation protecting homeowners from intrusion and attempting to inhibit fraudulent activity is proper governmental legislation. Established case authority makes Petitioners' request for certiorari a redundancy.

It is requested that their petition be denied.

Respectfully submitted,

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